

and whether it will be processed or dismissed for lack of timeliness or specificity. For protests that are not dismissed, the SBA will, within 15 working days after receipt of the protest, determine the disadvantaged status of the challenged offeror and will notify the contracting officer, the challenged offeror, and the protestor. Award may be made on the basis of that determination. The determination is final for purposes of the instant acquisition, unless it is appealed and—

(1) The contracting officer receives the SBA's decision on the appeal before award; or

(2) The contracting officer has agreed to terminate the contract, as appropriate, based on the outcome of the appeal (see 13 CFR 124, Subpart B).

(h) If the contracting officer does not receive an SBA determination within 15 working days after the SBA's receipt of the protest, the contracting officer shall presume that the challenged offeror is disadvantaged and may award the contract, unless the SBA requests and the contracting officer grants an extension to the 15-day response period.

(i) An SBA determination may be appealed by—

(1) The party whose protest has been denied;

(2) The concern whose status was protested; or

(3) The contracting officer.

(j) The appeal must be filed with the SBA's Administrator or designee within five working days after receipt of the determination. If the contracting officer receives the SBA's decision on the appeal before award, the decision shall apply to the instant acquisition. If the decision is received after award, it will not apply to the instant acquisition (but see paragraph (g)(2) of this section).

[63 FR 35722, June 30, 1998, as amended at 63 FR 36122, July 1, 1998]

19.306 Protesting a firm's status as a HUBZone small business concern.

(a) For sole source acquisitions, the SBA or the contracting officer may protest the apparently successful offeror's HUBZone small business status. For all other acquisitions, an offeror, the contracting officer, or the

SBA may protest the apparently successful offeror's HUBZone small business concern status.

(b) Protests relating to whether a HUBZone small business concern is a small business for purposes of any Federal program are subject to the procedures of subpart 19.3. Protests relating to small business size status for the acquisition and the HUBZone qualifying requirements will be processed concurrently by SBA.

(c) All protests must be in writing and must state all specific grounds for the protest. Assertions that a protested concern is not a qualified HUBZone small business concern, without setting forth specific facts or allegations, are insufficient. An offeror must submit its protest to the contracting officer. The contracting officer and the SBA must submit protests to SBA's Associate Administrator for the HUBZone Program (AA/HUB).

(d) An offeror's protest must be received by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). Any protest received after these time limits is untimely. Any protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester.

(e) Except for premature protests, the contracting officer must forward any protest received, notwithstanding whether the contracting officer believes that the protest is insufficiently specific or untimely, to: AA/HUB, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. The AA/HUB will notify the protester and the contracting officer of the date the protest was received and whether the protest will be processed or dismissed for lack of timeliness or specificity.

(f) SBA will determine the HUBZone status of the protested HUBZone small business concern within 15 business days after receipt of a protest. If SBA does not contact the contracting officer within 15 business days, the contracting officer may award the contract to the apparently successful offeror, unless the contracting officer has

granted SBA an extension. The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

(g) SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Associate Deputy Administrator for Government Contracting and 8(a) Business Development (ADA/GC&8(a)BD).

(h) The protested HUBZone small business concern, the protester, or the contracting officer may file appeals of protest determinations with SBA's ADA/GC&8(a)BD. The ADA/GC&8(a)BD must receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any appeal received after the 5-day period.

(i) The appeal must be in writing. The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the decision is erroneous or what significant fact the AA/HUB failed to consider.

(j) The party appealing the decision must provide notice of the appeal to the contracting officer and either the protested HUBZone small business concern or the original protester, as appropriate. SBA will not consider additional information or changed circumstances that were not disclosed at the time of the AA/HUB's decision or that are based on disagreement with the findings and conclusions contained in the determination.

(k) The ADA/GC&8(a)BD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The SBA decision, if received before award, will apply to the pending acquisition. SBA rulings received after award will not apply to that acquisition. The ADA/

GC&8(a)BD's decision is the final decision.

[63 FR 70269, Dec. 18, 1998, as amended at 64 FR 51831, Sept. 24, 1999]

19.307 Protesting a firm's status as a service-disabled veteran-owned small business concern.

(a) For sole source acquisitions, the SBA or the contracting officer may protest the apparently successful offeror's service-disabled veteran-owned small business status. For service-disabled veteran-owned small business set-asides, any interested party may protest the apparently successful offeror's service-disabled veteran-owned small business concern status.

(b) Protests relating to whether a service-disabled veteran-owned small business concern is a small business for purposes of any Federal program are subject to the procedures of Subpart 19.3. Protests relating to small business size status for the acquisition and the service-disabled veteran-owned small business status requirements will be processed concurrently by SBA.

(c) All protests must be in writing and must state all specific grounds for the protest. Assertions that a protested concern is not a service-disabled veteran-owned small business concern, without setting forth specific facts or allegations, are insufficient. An offeror must submit its protest to the contracting officer. The contracting officer and the SBA must submit protests to SBA's Associate Administrator for Government Contracting. The SBA regulations are found at 13 CFR 125.24 through 125.28.

(d) An offeror's protest must be received by close of business on the fifth business day after bid opening (in sealed bid acquisitions) or by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror (in negotiated acquisitions). Any protest received after these time limits is untimely. Any protest received prior to bid opening or notification of intended award, whichever applies, is premature and shall be returned to the protester.

(e) Except for premature protests, the contracting officer must forward to SBA by mail or facsimile transmission